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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 411

DR. FRED ROYER AND DR. CLARA WILLIAMS,
Petitioners,

v.

BOARD OF ELECTION SUPERVISORS
FOR CECIL COUNTY, MARYLAND

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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BOARD OF ELECTION SUPERVISORS
FOR CECIL COUNTY, MARYLAND

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The Petitioners, Dr. Fred Royer and Dr. Clara Williams, pray that a writ of certiorari be issued to review the decision and judgment of the Court of Appeals of Maryland entered June 7, 1963, affirming the decision and judgment of the Circuit Court for Cecil County (Second Judicial Circuit of Maryland), affirming the refusal of the Board of Election Supervisors for Cecil County, Maryland, to permit the Petitioners to register to vote, and to grant such relief as this Court deem proper.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (Appendix, 2a) is recorded at 237 Md. 376, 191 A. 2d 446. The opinion of the Circuit Court for Cecil County, Maryland (Appendix, 7a) is unreported.

JURISDICTION

The opinion of the Court of Appeals of Maryland was filed on June 7, 1963, and its mandate thereon was issued July 8, 1963. The jurisdiction of this court is invoked under Article III, Section 2 of the Constitution of the United States and 28 U.S.C.A. 1257(3).

QUESTION PRESENTED

The Court of Appeals of Maryland affirmed a decision of the Circuit Court for Cecil County dismissing the appeal of the Petitioners from a determination by the Board of Election Supervisors for Cecil County, Maryland, denying the Petitioners' right to register to vote in Cecil County on the ground that as residents of Perry Point, Maryland, a Federal reservation entirely within the geographical limits of Cecil County, Maryland, the Petitioners were not residents of the State of Maryland and thus did not qualify to vote in Maryland under Article I, Section 1 of the Constitution of Maryland. The question presented is:

Did the refusal of the Board of Election Supervisors for Cecil County to permit the Petitioners to register to vote violate the Petitioners' rights as guaranteed by the Fourteenth Amendment of the Constitution of the United States?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent Constitutional provisions are as follows:

Fourteenth Amendment, U. S. Constitution, Section 1:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Constitution of Maryland, Section 1:

"All elections shall be by ballot; and every citizen of the United States, of the age of twenty-one years, or upwards, who has been a resident of the State for one year, and of the Legislative District of Baltimore city, or of the county, in which he may offer to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district, in which he resides, at all elections hereafter to be held in this State * * *."

Reference is made in the argument to the following Federal and State statutes:

4 U.S.C.A. 104-106.
26 U.S.C.A. 3305.
40 U.S.C.A. 290.
20 U.S.C.A. 236.

Annotated Code of Maryland:

Article 96, Sections 31, 32, 33.
Article 16, Section 23.
Article 16, Section 69.

These statutes have not been set out here verbatim because the court is not being asked to construe them. The meaning and effect of these statutes is well-settled and not in dispute in this case. They are referred to in the argument herein only because of their effect on the factual situation involved herein.

STATEMENT OF CASE

At the time the Petitioners attempted to register to vote, they were and still are citizens of the United States of

America and over twenty-one years of age. They are civilian employees of the United States Government at the Veterans Hospital at Perry Point, Maryland, which is a Federal reservation located within the geographical limits of Cecil County in the State of Maryland. They have resided in Perry Point for more than five years and have no other residence in any other county or state. Perry Point is composed of about 500 acres of land. It was purchased by the United States Government in 1918 during World War I and was devoted to the manufacture of chemicals for war purposes. A manufacturing plant and a large settlement of workers' houses were erected on it and there is now located there, hospitals for the care of disabled veterans, which are operated by the Veterans' Administration. This acquisition by the Federal Government was in strict accordance with the provisions of the Federal Constitution; that is, it was purchased by the United States for the purposes mentioned in the Constitution and the consent of the State of Maryland was given to the acquisition as provided by the Acts of 1906, General Assembly of Maryland, Chapter 734, now codified as Sections 31, 32 and 33, Article 96 of the Annotated Code of Maryland (1957). That in ceding this property to the Federal Government, the State of Maryland gave the United States exclusive jurisdiction thereof, reserving only the right to serve civil and criminal process upon persons located there and expressly agreeing that such territory shall be exempt from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this State. That since this ceding of jurisdiction, the United States has receded to the State of Maryland jurisdiction to a substantial extent. By virtue of 4 U.S.C.A., Sections 104-106, known as the Buck Act, passed in 1947, the Federal Government gave the state authority to collect income taxes, sales and use taxes, and motor

and heating fuel taxes from persons residing on any Federal reservation located within the state. That by another Act of Congress, codified as 40 U.S.C.A., Section 290, civilian residents of Federal reservations were made subject to Workmen's Compensation Laws of the state, and by still another Act of Congress, codified as 26 U.S.C.A., Section 3305, civilian residents of Federal reservations were made subject to the Unemployment Compensation Laws of the state in which the Federal reserve was located. Under these authorities, your Petitioners are required to pay and do pay to the State of Maryland: (a) State income tax, (b) sales and use taxes, (c) State fuel tax, and are required to have State motor vehicle operators' cards and auto tags. Further, the Petitioners each have two children and all of said children are attending public schools in Cecil County, presumably under 20 U.S.C.A., Section 236 et seq.

When this case was argued before the Circuit Court for Cecil County, it was contended by the Petitioners that the refusal of the Board of Election Supervisors for Cecil County to permit the Petitioners to register to vote violated the Petitioners' rights guaranteed under the Fourteenth Amendment. In response to this contention, Judge J. DeWeese Carter discussed this issue in his written opinion (Appendix, 13a, 14a) and concluded that:

> "It is settled law enunciated by the decisions of both the Supreme Court of the United States and our own Court of Appeals that the Fourteenth Amendment did not include the right of suffrage in the privileges and immunities of citizenship there guaranteed nor deny the states the right to establish the conditions and qualifications upon which its citizens may vote."

It should be noted that it is the Petitioners' contention that while the State may set the standard under which its

citizens must qualify in order to vote, that standard must be fair and reasonable and, being fair and reasonable, must be applied equally to all the citizens of the State.

This same argument was made before the Court of Appeals. In its opinion, the Court said (App. 4a):

> "The appellants contend, (1) that they are residents of this State within the meaning of Article I, sec. 1, of the Maryland Constitution, and (2) that the refusal of the Board to register them as voters deprives them of rights guaranteed by the Fourteenth Amendment to the Federal Constitution, and particularly the equal protection clause."

REASONS RELIED UPON FOR ISSUANCE OF THE WRIT

The standard under which citizens of Maryland must qualify in order to enjoy the right of suffrage is set out in Article I, Section 1 of the Constitution of Maryland. It is not contended that this standard is unfair but rather, that the manner in which this standard is applied is discriminatory.

The Supreme Court of the United States has made it clear that the right of suffrage is established and guaranteed by the Constitution. Although this right is subject to the imposition of state standards which are not discriminatory, where discrimination is sufficiently shown, relief will be granted under the equal protection laws of the Fourteenth Amendment. *Nixon v. Herndon*, 273 U.S. 536 (1927); *Nixon v. Condon*, 286 U.S. 73 (1932); *Snowden v. Hughes*, 321 U.S. 1 (1944); *Lassiter v. North Hampden County Board of Elections*, 360 U.S. 45 (1959); *Baker v. Carr*, 369 U.S. 186 (1962); *Gray v. Sanders*, 372 U.S. 368 (1963).

Equally clear and definite is the fact that the Petitioners have resided within the geographical limits of Cecil County

in the State of Maryland for the period of time pertinent to the issue in this case and that they meet every other qualification to vote therein. However, they have been denied that right solely on the ground that they reside in Perry Point, a Federal enclave. The Maryland court stated this proposition as follows (App. 5a):

> "It is therefore clear that persons residing upon the Government reservation at Perry Point are not residents of the State of Maryland for the purpose of exercising the right of franchise * * *, for the reason that they reside upon territory belonging to the United States and not the State of Maryland."

In order to reach this conclusion, the Court of Appeals, as did the Circuit Court and the Board of Election Supervisors, had to resort to a dated and antiquated legal concept, to wit: that land, purchased by the Federal Government under Article I, Section 8, Clause 17 of the United States Constitution and to which the state has ceded exclusive jurisdiction to the Federal Government, becomes foreign territory within the state in which it is located. This concept was created in a philosophical and factual atmosphere much different from that of today. The State of Maryland now has and exercises substantial jurisdiction over Perry Point and other Federal reservations within its boundary, as do the states throughout the nation. As is pointed out in the decision of the Court of Appeals (App. 3a):

> "The Congress of the United States has since enacted various statutes waiving or receding to the States jurisdiction in certain particulars. The 'Buck Act,' in 1947, now codified as 4 U.S.C.A. Sections 104-106, provides in substance that the States may collect from persons residing on Federal reservations (a) income taxes, (b) sales and use taxes, (c) motor vehicle and heating fuel taxes. By 40 U.S.C.A. Section 290, civilian

> residents on Federal reservations are made subject to state Workmen's Compensation Laws, and by 26 U.S.C.A. Section 3305, to Unemployment Compensation Laws of the States. The petitioners pay State income, sales and use taxes, the fuel tax, and motor vehicle registration and operator's license fees."

By Acts of the Maryland Legislature, residency in this and other Federal areas within the state constitutes residency for the purpose of divorce and adoption proceedings. Further, the public schools in the county are open to the children who reside in the area.

It appears therefore that there is no difference between the obligations imposed by the State of Maryland upon citizens who do not reside on Federal reservations and those citizens who do reside on Federal reservations. Therefore, there should be no difference between the rights of suffrage enjoyed by the respective groups.

This was the view expressed in an especially well-reasoned opinion of a Court of Appeals in California in the case of *Arapajolu v. McMenamin*, 249 Pac. 2d 318. This case involved a factual situation almost identical to that of the case at bar. After discussing the jurisdiction that Congress has receded to the states as above noted, the Court said:

> "It is clear that Congress has receded to the States jurisdiction in substantial particulars over Federal lands over which the United States previously had exclusive jurisdiction. It may no longer be said of those lands that they are, as the Ohio court in Sinks v. Reese (190 Ohio St. 306), 'as foreign to Ohio as is the State of Indiana or Kentucky or the District of Columbia.'"

Later, citing an earlier California case which was decided before the passage of the Buck Act, and which took the view which the Maryland court still takes, the Court said:

> "The [federal] jurisdiction over these lands is no longer full or complete or exclusive. A substantial portion of such jurisdiction now resides in the States and such territory can no longer be said with any support in logic to be foreign to California or outside of California or without the jurisdiction of California or within the exclusive jurisdiction of the United States. *It is our conclusion that since the State of California now has jurisdiction over the areas in question in the substantial particulars above noted residence in such areas is residence within the State of California entitling such residents to the right to vote given by sec. 1, Art. II of our Constitution.*" (Emphasis added.)

Certiorari to the Supreme Court of California was denied.

CONCLUSION

As stated earlier, the issue in this case involves many more persons than those residing in Perry Point. It involves the elective franchise of the thousands of persons who reside on Federal reservations throughout the country. At the present time the appellate courts of three states (California — *Arapajolu v. McMenamin*, supra; West Virginia — *Adams v. Londeree*, 83 S.E. 2d 127; Utah — *Rothfels v. Southworth*, 356 Pac. 2d 612) have held that such persons do have the right to vote. We are left then with the anomalous situation of residents of Federal reservations being able to vote in some states and not in others.

We believe that this is the first opportunity this Court has had to rule on the precise question presented by this case. This Court has previously held that the Federal and State governments may exercise concurrent jurisdiction over lands acquired by the United States under Article I, Section 8, clause 17 of the United States Constitution (*James v. Dravo Contracting Co.*, 302 U.S. 134; 58 S. Ct.

208, 82 L. ed. 155), and has denied certiorari in two cases where the state courts, following the passage of the Buck Act, held that the state did have jurisdiction over such land for the purposes enumerated therein. *Kiker v. City of Philadelphia*, 31 A. 2d 289, certiorari denied 320 U.S. 741, 64 S. Ct. 41, 88 L. ed. 439; *Sanders v. Oklahoma Tax Commission*, 169 Pac. 2d 748, certiorari denied 329 U.S. 780, 67 S. Ct. 202, 91 L. ed. 670.

We, therefore, respectfully urge this Honorable Court to grant the Petition for Writ of Certiorari in order to achieve unanimity in a matter vitally affecting the rights of many citizens.

Respectfully submitted,

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APPENDIX

STIPULATION OF FACTS

(Filed December 27, 1962)

1. Petitioners have attempted to register to vote in Cecil County, Maryland and have been refused the right to register by Dewey Patterson, President of the Board of Election Supervisors of Cecil County.

2. Petitioners are civilian employees of the Veterans' Administration and live and work at Perry Point, Maryland, and have no other residence in any other county or state.

3 Dr. Royer has lived and worked at Perry Point for five years and has two children now attending public schools in Cecil County; Dr. Williams has lived and worked at Perry Point for eleven years and has two children now attending public schools in Cecil County.

4. That Perry Point, with about 500 acres of land, is wholly within the geographical limits of Cecil County and was purchased by the United States in 1918 during the War and devoted to the manufacture of chemicals for war purposes A manufacturing plant was erected on it and also a large settlement of workers' houses. It now has on it, in addition, hospitals for the care of disabled veterans, which is operated by the Veterans' Administration. That the acquisition was in strict accordance with the provisions of the Federal Constitution; that is, it was purchased by the United States for the purpose mentioned in the Constitution, and the consent of the State of Maryland was given to the Federal Government as well as the exclusive jurisdiction thereof being ceded to the Federal Government by the Acts of 1906, General Assembly of Maryland, Chapter 743. Only the right to serve civil and criminal process was reserved to the State of Maryland and the United States and Maryland expressly agreed that the residents should be exempt from "state, county, and municipal taxation,

assessment or other charges which may be levied or imposed under the authority of the State".

5. By virtue of 4 U.S.C.A. Sections 104-106, enacted after the acquisition of Perry Point as hereinbefore described; Petitioners are now required to pay, and in fact, do pay Maryland Income Tax, Maryland Sales and Use Tax, Maryland Fuel Tax, and in addition, are required to have and do have Maryland Motor Vehicles Operators' cards and Maryland Auto Tags.

6. The Workmen's Compensation Laws and the Unemployment Compensation Laws of Maryland are applicable to the Petitioners. (40 U.S.C.A. to 90; 26 U.S.C.A. 1606 c.)

Respectfully submitted,

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OPINION OF COURT OF APPEALS OF MARYLAND

HENDERSON, J., delivered the Opinion of the Court:

This appeal is from an order dismissing a petition for appeal under Code (1957), Art. 33, sec. 46, cf. Code (1962 Supp.), Art. 33, sec. 46(e), praying an order requiring the Board of Election Supervisors of Cecil County to register the petitioners as qualified voters in Cecil County. The salient facts are stipulated. The petitioners are civilian employees of the United States Government at the Perry Point Veterans' Hospital, located within the geographical limits of Cecil County, and reside and work there, having

no other residence in the County. Dr. Royer has two children attending the public schools in Cecil County and he has resided at Perry Point for the past five years. Dr. William has two children attending the public schools of Cecil County, and she has resided at Perry Point for eleven years.

The tract known as Perry Point, consisting of about five hundred acres of land, was purchased by the United States Government in 1918 and used to manufacture chemicals for war purposes. A manufacturing plant was erected thereon and a number of workers' houses and facilities. It now contains, in addition, hospitals for the care and treatment of disabled veterans, operated by the Veterans' Administration. The tract was purchased in strict accordance with the provisions of the Federal Constitution, for the purposes mentioned in Article I, sec. 8, clause 17, and with the consent of the State of Maryland. Exclusive jurisdiction was ceded by the State, in accordance with the provisions of Chapter 743 of the Acts of 1906, now codified as Code (1957), Art. 96, secs. 31, 36 and 37. The only reservation by the State was the right to serve civil and criminal process upon persons found there. The State expressly agreed that the land ceded should be exempt "from all State, county and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State."

The Congress of the United States has since enacted various statutes waiving or receding to the States jurisdiction in certain particulars. The "Buck Act," in 1947, now codified as 4 U.S.C.A., secs. 104-106, provides in substance that the States may collect from persons residing on Federal reservations (a) income taxes, (b) sales and use taxes, (c) motor vehicle and heating fuel taxes. By 40 U.S.C.A., sec. 290, civilian residents on Federal reservations are made subject to state Workmen's Compensation Laws, and by 26 U.S.C.A., 3305, to Unemployment Compensation Laws of the States. The petitioners pay State income, sales and use taxes, the fuel tax, and motor vehicle registration and operator's license fees.

The appellants contend, (1) that they are residents of this State within the meaning of Article I, sec. 1, of the Maryland Constitution, and (2) that the refusal of the Board to register them as voters deprives them of rights guaranteed by the Fourteenth Amendment to the Federal Constitution, and particularly the equal protection clause.

The provision of the Maryland Constitution, cited above, confers the right to vote upon every citizen of the United States, of the age of 21 years or upwards, "who has been a resident of the State for one year, and of the Legislative District of Baltimore city, or of the county, in which he may offer to vote, for six months next preceding the election * * * in the ward or election district, in which he resides * * *." The appellants concede that until a few years ago courts throughout the nation have generally held that where the United States Government has obtained title to, and exclusive jurisdiction over, land within the territorial boundaries of a state, the residents of the ceded area were no longer residents of the state. This Court has ruled upon precisely this point in *Lowe v. Lowe*, 150 Md. 592 (1926), where the territory involved was the same as in the instant case. The holding was that a resident of Perry Point had not acquired a residence for the purpose of filing suit for divorce. Chief Judge Bond, joined by Judge Urner, dissented on the ground of necessity and because he thought it unlikely that the Founding Fathers should have contemplated the creation of a legal no-man's-land where residents of Federal enclaves would have no court to adjudicate questions of domestic relations. The Maryland Legislature promptly afforded relief in this field to persons residing on Federal reservations. See Code (1957), Art. 16, sec. 23. (Ch. 225, Acts of 1927.) It subsequently opened the State courts to such residents in adoption proceedings. See Code (1957), Art. 16, sec. 69. It also opened its schools to children residing on Federal reservations, presumably receiving negotiated payments therefor under 20 U.S.C.A., sec. 236, *et seq.*

However, the Maryland Legislature took no such action in regard to voting rights. In fact, we are informed by

the appellees that a bill to confer such rights upon all residents of Federal reservations in Maryland was introduced in the 1962 session but failed of passage. In the *Lowe* case this Court specifically stated (p. 600): "It is therefore clear that persons residing upon the government reservation at Perry Point are not residents of the State of Maryland for the purpose of exercising the right of franchise * * *, for the reason that they reside upon territory belonging to the United States and not the State of Maryland." The Attorney General has also ruled specifically that residents of Perry Point are not entitled to registration in Cecil County. See 17 Opinions of the Attorney General 139 and 36 Opinions of the Attorney General 129. In the opinion last cited Attorney General Hammond ruled that a bill seeking to confer the right to vote on residents of Perry Point was discriminatory and hence unconstitutional because it was limited to residents of that area, and because it would require a constitutional amendment to alter the meaning of the term resident in Article I, section 1 of the Maryland Constitution. We express no opinion on the point, which is not now before us.

The appellants' chief reliance is upon an argument that the "Buck Act" has conferred benefits upon the States, and that the States should reciprocate. It may be noted that the appellants do not pay any property taxes, and hence do not contribute as much as local residents to the cost of local government. As the appellees point out, the fact that the Congress has permitted State workmen's compensation and unemployment acts to apply, and that the State has opened its courts and schools, to residents of the Federal enclave, are beneficial to those residents. The fact that they pay automobile fees and sales taxes is for the privilege of driving, or buying, in Maryland. Maryland collects no taxes upon activities confined to the reservation.

But in any event, the mere fact that the United States Government has seen fit to yield, for the time being and for reasons of policy, some of its exclusive rights to the States, does not, we think, amount to a general grant of concurrent jurisdiction. Nor does it compel the States to

afford voting privileges. We find nothing to the contrary in *James v. Dravo Contracting Co.*, 302 U.S. 134, 148, relied on by the appellants. Nor do we find in the latest case on the subject, *Paul v. United States*, 371 U.S. 245, any intimation that the Fourteenth Amendment will be extended to cover residents of Federal enclaves, where the matter has traditionally been left to adjustment between the Federal and State legislative bodies.

Certain commentators have pointed out the difficulties and hardships inherent in the situation, but they do not suggest that the law is not well settled. See 58 Yale L. Rev. 1402 and 101 U. of Penn. L. Rev. 124. It would appear that the weight of authority, and virtually all the earlier cases, support the proposition that residents of Federal enclaves, where the Federal government has exclusive jurisdiction, are not state residents for voting purposes. See *Sinks v. Reese*, 19 Ohio State 306, 310, cited in the *Lowe* case, and followed in *State, ex rel. Wendt et al. v. Smith, et al.*, 103 N.E. 2d 822 (Ohio); *Arledge v. Mabry*, 197 P. 2d 884 (N.M.), cf. *Montoya v. Bolack*, 372 P. 2d 387 (N.M.); *Herken v. Glynn*, 101 P. 2d 946 (Kan.); *McMahon v. Polk*, 73 N.W. 77 (S.D.); *In Re Town of Highlands*, 22 N.Y.S. 137. Many cases in accord are cited in a note 34 A.L.R. 2d 1193.

The appellants rely upon three recent cases, *Arapajolu v. McMenamin*, 249 P. 2d 318 (Cal. App.); *Rothfels v. Southworth*, 356 P. 2d 612 (Utah); and *Adams v. Londeree*, 83 S.E. 2d 127 (W. Va.). The *Arapajolu* case was decided by an intermediate court, and the case was denied review by the Supreme Court of California, three judges dissenting. The decision turned on the court's construction of the local statute. See also the comment on the case in *Schwartz v. O'Hara TP. School Dist.*, 100 A. 2d 621 (Pa.). In both the *Rothfels* and *Adams* cases there were powerful dissents, and the decisions were rested on the local statutes and the fact that the state had reserved concurrent jurisdiction. We think these cases are readily distinguishable and not persuasive.

The appellants' constitutional argument seems to be based, not upon a claim of equal protection but on a claim of "taxation without representation." This colonial slogan is not found in our State Constitution, or in the Federal Constitution, and the principle is not without exception. See *Thomas v. Gay*, 169 U.S. 264, 276. Moreover, we need only look to the District of Columbia, once a part of Maryland before exclusive jurisdiction was ceded to the Federal Government, to see that the right to tax is not inseparable from the right to vote, for the residents of that area are taxed although they have no right to vote for the persons who impose the taxes in that taxing area.

For all of the foregoing reasons we hold that the *Lowe* case is controlling. If a change is desirable, on which we express no opinion, we think it should be through adjustment by the sovereign legislative bodies and not imposed by the courts.

Order Affirmed, With Costs.

OPINION OF CIRCUIT COURT FOR CECIL COUNTY

(Filed January 2, 1962)

This is an appeal from a ruling of the Board of Election Supervisors for Cecil County, refusing to register the petitioners as qualified voters in that county. The appeal is taken pursuant to Article 33, section 46 of the Md. Code (1957 Ed.) and prays for an appropriate order requiring the defendant Board to register the petitioners.

The case is now before the Court on a second amended petition and answer, together with a written stipulation of facts filed by the parties. These pleadings and stipulation establish the following facts: that the petitioners are citizens of the United States and over twenty-one years of age; that they are civilian employees of the Veterans' Administration, who live and work at Perry Point, Maryland, and have no other residence in any other county or state; that Perry Point is a federal reservation located within the

geographical limits of Cecil County, State of Maryland, and composed of about five hundred (500) acres of land; that it was purchased by the United States Government in 1918 during World War I, initially devoted to the manufacture of chemicals for war purposes, whereby a manufacturing plant and large settlement of workers' houses were erected on it, and there is now located there, hospitals for the care of disabled veterans which are operated by the Veterans' Administration; that this acquisition was made in accordance with Article I, section 8, clause 17 of the Federal Constitution, that is, it was purchased by the United States Government for the purposes mentioned in the Constitution with the consent of the State of Maryland; that such consent and exclusive jurisdiction was ceded by Chapter 743 of the Acts of 1906, reserving to the State of Maryland, only jurisdiction to serve criminal and civil process upon persons located there, and expressly agreeing that such territory should be exempt from all state, county and municipal taxation, assessment or other charges which might be levied or imposed under the authority of this state; that since this ceding of jurisdiction the United States has re-ceded jurisdiction in certain particulars by the passage of the "Buck Act" in 1947; now codified as 4 U.S.C.A. Sec 104-106; which provides in substance that the state in which any federal reservation is located shall have authority to collect from persons residing therein, (a) income taxes, (b) sales and use taxes, and (c) motor and heating fuel taxes; that by another Act of Congress codified as 40 U.S.C.A., Sec. 290, civilian residents of federal reservations were made subject to Workmens' Compensation laws of the state and by another Federal Act, codified as 26 U.S.C.A. 1606c, to Unemployment Compensation laws of the state; that under these authorities the petitioners are now required to pay and do pay to the State of Maryland, (a) a state income tax; (b) state sales and use taxes, (c) a state fuel tax, and are required to have state motor vehicle operator's cards and auto tags. The pleadings allege that under these federal statutes, allowing the state to tax the petitioners and subjecting them to laws of the state, substantially to the same extent as other citizens,

that they should be considered as qualified residents of Maryland privileged to exercise their right of franchise under Article I, section 1 of the Maryland Constitution. The petition further alleges that notwithstanding the petitioners are qualified to vote, as residents of the state who have resided for more than five years on the reservation, the defendant Board of Election Supervisors refused to register them on qualified voters in Cecil County. The petitioners pray for a writ of mandamus directing the defendant Board to register them and for other relief.

The Court of Appeals fully determined the jurisdictional authority of the United States and the State of Maryland respectively in this federal reservation in Lowe v. Lowe (1926), 150 Md. 592. That case concerned the question of whether a person residing there could acquire a residence in Maryland for the purpose of divorce. In ruling that the Federal government had exclusive jurisdiction over the area, with the exception of the right to serve civil and criminal process, and therefore that a person residing there could not acquire a residence in this state, so as to confer jurisdiction for divorce purposes, the Court said at p. 600:

> "The great weight of authority is to the effect that lands acquired in accordance with the provisions of the federal constitution cease to be a part of the state, and become federal territory, over which the federal government has complete and exclusive jurisdiction and power of legislation. *It is therefore clear that persons residing upon the government reservation at Perry Point are not residents of the State of Maryland for the purpose of exercising the right of franchise*, for taxation purposes, or for school purposes, for the reason that they reside upon territory belonging to the United States and not the State of Maryland; and in our opinion for the same reason, they are not such residents of the state as would entitle them to file a bill for divorce in any of the courts of the state." (Emphasis supplied.)

While the right of persons residing on the reservation to vote was not directly before the Court in that case, it is

obvious from the language used in the case it was the opinion of the Court that persons living on this reservation were not residents of the state for the purpose of exercising their elected franchise. See also Opinions of Md. Atty. General, Vol. 17, p. 139 (1932). For additional authorities in other jurisdictions holding that residents of such areas were not residents of the state for voting purposes prior to the "Buck Act" and other federal statutes receding jurisdiction to the states above mentioned. See also Commonwealth v. Clay, 8 Mass. 72 (1811); Opinion of Justices (1840, Mass.); 1 Met. 580; McMahon v. Polk, 10 S.D. 296, 73 N.W. 77 (1897).

At the hearing the petitioners conceded that the *Lowe* case made it clear it was the Court's opinion at that time that residents of Perry Point were not residents of Maryland for voting purposes; but contended that since part of the jurisdiction of the federal government over the area had subsequently been re-ceded to the state by the "Buck Act", enacted in 1947, and other similar federal statutes enacted since the *Lowe* case, thereby re-vesting in the state jurisdiction to tax residents of such reservations and otherwise make its law effective therein, the re-ceded jurisdiction should be interpreted as sufficient in scope to constitute residents of the area residents of the state for voting purposes. They further contend that to hold otherwise would be in violation of the rights of these persons as citizens of the United States under the due process and equal protection clauses of the Fourteenth Amendment of the Federal Constitution and tantamount to "taxation without representation".

In support of these contentions they cite three cases from other jurisdictions: Arapajolu v. McMenamin (1952), 113 Cal. App. 2d 824; 249 Pac. 2d 318; 34 A.L.R. 2d 1185; Adams v. Londeree (W. Va. 1954); 83 S.E. 2d 127; and Rothfels v. Southworth (Utah 1960); 356 Pac. 2d 612. The *Arapajolu* case was decision by the California District Court of Appeals to the effect that Congress by enactment of the "Buck Act" and other similar statutes, re-ceding to the states the authority to tax persons residing on Federal reservations

and to administer state Workmens' Compensation and Unemployment Compensation laws therein, had receded to them substantial jurisdiction. That thereby the states had reacquired sufficient jurisdiction over the territory to constitute it a part of the state within the meaning of the provisions of the California Constitution concerning the right of persons residing in the state to vote. The rationale of the opinion, is that the earlier cases, holding to the contrary was based on the premise that a person residing there was relieved of any obligation to contribute to state revenues and was subject to none of the burdens imposed upon other state citizens by state laws. The opinion then reasons that since the state now has jurisdiction to tax persons residing in the territory, the basis for holding that such persons are not residents of the state for voting purposes no longer exists. The opinion then cites an earlier California case, Johnson v. Morrill, 126 Pac. 2d 873 which held that where the United States *did not acquire exclusive jurisdiction* over land held by it, residence therein was sufficient to constitute residence within the state of California for voting purposes.

The opinion then concludes that the present jurisdiction of United States, in view of receded authority, is not now exclusive, and therefore that residence on the reservation is tantamount to residence in the state for voting purposes. The Supreme Court of California denied a re-hearing four to three. The petitioners contend that the ruling in *Arapajolu* was reaffirmed in Adams v. Londeree (W. Va. 1954), 83 S.E. 2d 127 and Rothfels v. Southworth (Utah, 1960), 356 Pac. 2d 612. However, an examination of the opinions in these cases does not substantiate this contention. While *Arapajolu* was cited with approval in both cases, the basis of the ruling that residence on a federal reservation was sufficient to confer voting rights as a resident of the state was on different grounds than that assigned in the *Arapajolu* case. In the *Adams* case, the basis of the ruling was that in giving consent to the cession to the United States, *the state had expressly retained concurrent jurisdiction* to the extent that it did not interfere with the use of the

property by the federal government for the purposes for which it was acquired.

In the *Rothfels* case, there was a state statute dealing expressly with the right of persons residing on military reservations to vote. The Court interpreted this statute so that such persons were deemed to have the same right of elective franchise as any other citizen of the state.

Other cases of which the Court has knowledge, that have considered the effect of re-ceding to the state the authority to tax under the "Buck Act", and other federal statutes revesting jurisdiction for other purposes, have come to a contrary conclusion than that reached in the *Arapajolu* case. See Arledge v. Madrid, N.M. (1948); 197 Pac. 2d 884; and State v. Smith (Ohio 1951), 103 N.E. 2d 822. In the *Arledge* case, the Mexico Court considered the effect of the federal statutes heretofore mentioned, upon the jurisdiction of the state and concluded that they did not restore any jurisdiction to the state nor take it from the federal government, beyond the matters *particularly and expressly mentioned* in the subject federal statutes. In the *Smith* case, decided subsequent to enactment of the receding statutes (1951), the Court of Appeals of Ohio decided that where the United States had accepted exclusive jurisdiction over ceded land for a federal reservation the residents of the area had lost their residence in the state and their consequent right to vote. This was a per curiam opinion. The Attorney General of Maryland advised in 1951; several years after enactment of the "Buck Act"; in 36 Atty. Gen. Opinions, 127, that the Court of Appeals in holding in the *Lowe* case that residents of Perry Point were not residents of Maryland, within the meaning of the divorce law, had also ruled they were not residents of Maryland "*for the purpose of exercising the right of franchise*", and that such language used by the Court in that opinion was in effect a clear ruling on this point. His opinion concluded that the legislature could not, by statute adopt a definition making such persons residents of Maryland, for voting purposes, and thereby in effect amend the Constitution of Maryland, which prescribed the qualifi-

cations for voting in Maryland. It appears therefore from the cases which have come to the Court's attention that none have supported the petitioner's contention except the *Arapajolu* case where the Supreme Court of California divided four to three on whether the decision should be reviewed.

We furthermore find that such a construction of the receding statute does not amount to a violation of the petitioners rights under the due process or equal protection clauses of the Fourteenth Amendment of the Federal Constitution. The equal protection clause is applicable only to persons within the jurisdiction of the state by its express provisions. The petitioners as persons residing on this federal reservation have been found not to be within the jurisdiction of Maryland, except for special and limited purposes. Lowe v. Lowe, supra. Neither does the fact that many of the tax burdens that are imposed by the state on its residents who are allowed to vote are likewise imposed upon the petitioners who are not allowed to vote, constitute a violation of their rights and privileges as citizens of the United States under the due process clause of this Amendment. The nature of the right to vote is fully set forth in the case of Anderson v. Baker (1865), 23 Md. 531. That case dealt with the right of a Constitutional Convention to prescribe the qualification of voters in Maryland so as to disfranchise certain residents who had given their allegiance to the Confederate States. In holding that the people of the state, in a duly assembled convention, had such right, the Court there said, at p. 619:

> "Among the absolute unqualified rights of the states is that of regulating the elective franchise. It is the foundation of State authority. The most important political function exercised by the people in their sovereign capacity * * *. Whilst the right of the people to participate in the legislature is the best security of liberty and the foundation of all free government, yet it is subordinate to the higher power of regulating the qualifications of the electors and the elected. * * *. Citizenship and suffrage are by no means inseparable

> the latter is no one of the universal inalienable rights, with which men are endowed by their Creator but is altogether conventional."

At p. 625 the Court in that case further said:

> "The right of suffrage being a creature of the organic law, may be modified or withdrawn by the sovereign authority which conferred it, without inflicting any punishment on those who are disqualified."

It is settled law enunciated by the decisions of both the Supreme Court of the United States and our own Court of Appeals that the Fourteenth Amendment did not include the right of suffrage in the privileges and immunities of citizenship there guaranteed nor deny the states the right to establish the conditions and qualifications upon which its citizens may vote. See Pope v. Williams (1903), 98 Md. 59, 71, affirmed 193 U.S. 621; Minor v. Happersett, 21 Wall. 162, 22 L. Ed. 627. Furthermore, the colonial maxim of "no taxation without representation" is not actually a part of either our federal or state constitutions and while the general principle has received some judicial recognition it does not mean, that no person shall be taxed unless he had an opportunity to vote for members of the legislative body that impose the tax. If such were the case taxes could not validly be imposed on residents of the District of Columbia, aliens or non-residents. No such contention has ever seriously been made. See opinion of U.S. Supreme Court in Thomas v. Gay (1898), 169 U.S. 264, 42 L. Ed. 740; 51 Am. Jur. title, taxation, par. 50. The Constitution of Maryland in Article 1, section 1, requires residence in this state for one year and in the county, in which the person proposes to vote, for six months prior to election, as a qualification of eligibility to exercise the elective franchise.

It is our opinion, therefore, that exclusive jurisdiction of the United States over the area included within the federal reservation known as "Perry Point", located in Cecil County, which was ceded to it by Maryland by Chapter 743 of the Acts of 1906 continues to be held by the

Federal Government except in respect to the limited matters which are expressly mentioned and set forth in the receding statutes. Therefore persons who reside there cannot acquire residence in the State of Maryland so as to qualify for voting privileges under the requirements of Article 1, section 1 of the Constitution of Maryland.

Making such persons eligible to vote in this state is a matter for the Legislature and the people by the enactment and adoption of an appropriate amendment to the state constitution and not for the courts. However, strong our belief and feeling may be that in fairness and equality these persons, who bear their fair share of the tax burdens of the state, should be eligible to vote and thereby participate in one of the highest privileges of citizenship under a free system, we cannot properly make effective our convictions by usurping the prerogatives of the Legislature and the people.

The Court finds therefore that the petitioners have failed to establish that they are legally qualified to exercise their elective franchise under the provisions of the Constitution of Maryland, and therefore rules that the petition should be dismissed.

An order will be signed in accordance with this opinion

J. DeWeese Carter,
Judge

ORDER

In accordance with the aforegoing opinion, it is this 2nd day of January, 1963, by the Circuit Court for Cecil County, Ordered and Adjudged, that the petition be and it is hereby dismissed, with costs.

J. DeWeese Carter,
Judge

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